

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED

NOV 08 2019

Clerk, U.S. District Court
District Of Montana
Missoula

TIMOTHY ERIC RITESMAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

CV 19-114-M-DLC-KLD

ORDER

United States Magistrate Judge Kathleen L. DeSoto issued her Findings and Recommendations in this case on September 10, 2019, recommending that the Court dismiss Petitioner Timothy Eric Ritesman's petition for writ of habeas corpus as unexhausted. (Doc. 12.) Ritesman did not file objections to the Findings and Recommendation,¹ and so he is not entitled to de novo review. 28 U.S.C. § 636(b)(1)(C). Absent objection, this Court reviews findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake

¹ Within the 14-day window for filing objections, the Court received a supplement that Ritesman had signed and sent prior to issuance of the Findings and Recommendation. (Doc. 13.) This supplement merely adds to the record of Ritesman's state court proceeding, and it cannot be construed as an objection.

has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Judge DeSoto found that Ritesman’s state postconviction proceeding remains ongoing. (Doc. 12 at 3-4.) The Court finds no clear error in this finding. Because the Court cannot hear Ritesman’s federal habeas claim until he has exhausted state remedies, 28 U.S.C. § 2254(b)(1)(A), it adopts the recommendation to dismiss this matter. The Court also does not find that “jurists of reason would find it debatable whether the district court was correct in its procedural ruling,” *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012), and it accordingly adopts Judge DeSoto’s recommendation to deny a certificate of appealability.

Accordingly, IT IS ORDERED:

(1) Judge DeSoto’s Findings and Recommendations (Doc. 12) is

ADOPTED;

(2) Ritesman’s Amended Petition (Doc. 11) is DISMISSED without prejudice as unexhausted; and

(3) A certificate of appealability is DENIED.

DATED this 8th day of November, 2019.



Dana L. Christensen, Chief Judge
United States District Court